

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CRIMINAL NO: 11-159
v.	*	SECTION: "B" (1)
MARK J. TITUS	*	
	*	
	*	

FACTUAL BASIS

Should this matter proceed to trial, both the government and the defendant, **MARK J. TITUS**, do hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crime to which the defendant is pleading guilty and that the government would prove the following beyond a reasonable doubt at trial:

Mark J. Titus is the Chief Operations Officer of Garner Services, L.L.C. (GSL). GSL is a construction management company whose majority owner is E.G. E.G. owns 51% of the company and Titus owns 24.5%. Another owner, QCI, owns the remaining 24.5% of the company. Although E.G. is the majority owner of GSL, the company is controlled and managed by Titus.

Titus is responsible for running the company and managing the day-to-day operations of the contracts held by the company including a contract GSL had with the U.S. Army Corps of Engineers. This includes supervising the sub-contractors who do the actual construction work. Titus also oversees payments to the sub-contractors and directs to whom and when payments are made to those

sub-contractors. Titus reviews all invoices to GSL and then directs payments to those sub-contractors.

While examining relevant banking information, FBI agents uncovered checks from GSL to Company A and to Company B. Companies A and B were set-up and operated by Dominick Fazzio, the brother-in-law of Titus. Fazzio was responsible for incorporating Companies A and B and for making payments on behalf of those companies. A further review of the banking information for Company A and Company B revealed that both companies, after receiving payments from GSL, would then issue payments to TLT Properties, LLC, a company controlled by Titus. The payments made totaled \$925,320. The total amount invoiced, including payments already made and payments yet to be made, was \$1,200,320.

The government would establish that Company A invoiced GSL on September 4, 2009 for \$209,320. GSL then issued a check to Company A on October 9, 2009 for \$209,320. Company A also invoiced GSL on January 4, 2010 for \$762,000. Checks payable from GSL to Company A were issued on the following dates and for the following amounts: on April 21, 2010 for \$162,000; on October 6, 2010 for \$175,000; and on March 24, 2011 for \$150,000.

Further, the government would establish that Company B invoiced GSL for \$84,200 on June 2, 2008. As a result, GSL issued a check on June 11, 2008 to Company B for \$84,200. Company B also invoiced GSL on November 28, 2008 for \$108,400. GSL then issued a check to Company B, dated December 10, 2008, for \$108,400. Company B invoiced GSL for \$36,400 on November 28, 2010. As a result, GSL issued a check, dated January 4, 2011, to Company B for \$36,400.

The evidence would show that, according to various witnesses, neither Company A nor Company B performed any services for GSL that warranted any payments to those companies or to

Fazzio. Further, the evidence would demonstrate that Titus and Fazzio were aware that Company A and Company B performed no legitimate work for GSL and that other employees of GSL were unaware of the scheme concocted by Titus and Fazzio. Moreover, the evidence would show that all of the invoices used in the scheme were fraudulent.

The evidence would establish that Titus and Fazzio agreed how to defraud GSL. In fact, the evidence would show that Titus and Fazzio decided to use Company A and Company B as a mechanism to issue fraudulent invoices to GSL, and Titus and Fazzio would, thereafter, share in the proceeds of the fraudulent scheme. Fazzio knowingly participated in this embezzlement scheme to defraud Garner Services. At all times mentioned in the Bill of Information, Fazzio was aware that Titus was submitting false invoices to Garner Services and Fazzio knowingly deposited and/or transmitted these illegally obtained funds ultimately to himself, Titus, other individuals at Titus' direction, and Titus controlled entities.

Titus and Fazzio, as part of the conspiracy, agreed to use a P.O. Box address in Indiana to facilitate the execution of the mail fraud scheme by assigning Company A the P.O. Box address and thus perpetuate the illusion that Company A was an Indiana company operating in proximity to the site where work was actually being performed and that Company A was performing legitimate work in Indiana.

Further, the government would establish that after Titus and Fazzio became aware of the FBI's investigation, Fazzio, as part of the conspiracy, discussed with Titus and insisted that Titus create false documents to create the illusion that Fazzio and Companies A and B were performing legitimate work for GSL and that subsequent payments to Titus and Fazzio, through TLT, were

likewise, legitimate. Fazzio did this to staunch the flow of truthful information to law enforcement officials and to impede the investigation.

Fazzio further prepared federal income tax returns for Titus during the time of the fraud scheme. Titus and Fazzio did not include the money received from the fraud scheme on the returns, prepared and submitted to the federal government by Fazzio, even though both Fazzio and Titus were aware that such payments should have been included on the returns. In addition, Titus had previously discussed the tax consequences with Fazzio and Fazzio informed Titus that he did not have to worry about paying or reporting any income unless Fazzio sent him a 1099 tax form. Fazzio did not issue a 1099 to Titus or his entities. Fazzio told Titus that he, Fazzio, “took care of things on his end” regarding any reporting of taxes by Fazzio. Fazzio and Titus’ failure to include the payments as income on the tax returns enabled Titus and Fazzio to avoid any tax liability on the payments received and also assisted in avoiding exposure to the fraud scheme.

The majority of the above checks payable to Company A and Company B were mailed via Fed-Ex to Titus in New Orleans. Occasionally, Titus would personally pick up a check from QCI’s main office in Pascagoula, Mississippi.

Limited Nature of Factual Basis

This proffer of evidence is not intended to constitute a complete statement of all facts known by Titus and described by Titus to the government, but rather is a minimum statement of facts intended to prove the necessary factual predicate for his guilty plea. The limited purpose of this

factual basis is to demonstrate that there exists a sufficient legal basis for Titus' plea of guilty to the charged offense.

MARK J. TITUS, Defendant

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